

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GEORGE M. CLANCY CARTING CO., INC.
AND ITS ALTER EGO, MOVING, INC.

and

Case 3--CA--14824

ROCHESTER LOCAL 118, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, AFL--CIO.

June 10, 1991
SUPPLEMENTAL DECISION AND ORDER

By Chairman Stephens and Members Crockett and Randalough
On December 27, 1989, the National Labor Relations Board issued an

unpublished Order in this proceeding adopting, in the absence of exceptions, the decision of the administrative law judge in which he found violations of Section 8(a)(1), (3), and (5) of the Act. On July 17, 1990,¹ the United States Court of Appeals for the Second Circuit entered an unpublished judgment enforcing in full the Board's Order. A controversy having arisen over the amounts of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 3 on November 16, 1990, issued a compliance specification and notice of hearing, with exhibits attached. The compliance specification alleges the backpay amounts due to the discriminatees named and the amounts due to the union pension fund under the collective-bargaining

¹ Dates are 1990, unless otherwise noted.

agreement,² and notifies the Respondent as to the requirements for an answer under Section 102.56 of the Board's Rules and Regulations.

On December 10, counsel for the General Counsel sent a letter by certified mail to the Respondent notifying it that an answer had not been filed within the prescribed time limit, and that a Motion for Summary Judgment would be seriously considered if an answer were not received by December 17. By letter dated December 17, the Respondent filed an answer to the compliance specification. In the answer, the Respondent, acting pro se, disagreed with the specification's calculations in regard to wages and benefits. Specifically the Respondent alleged that "'wages were calculated past the last day of the current contract at that time,'" and that at the relevant time, the Respondent was not a member of the pension fund for the following reasons: because of "'[t]he Costich Decision'"; because the pension fund would not accept its contributions; and because the pension fund "'terminated Clancy's in 1985 or 1986 as a participant in the fund.'"³

On January 4, 1991, the General Counsel filed with the Board a Motion to Transfer Proceedings to the Board and for Summary Judgment, with exhibits attached. The General Counsel argues that the answer fails to state other premises on which backpay figures should be based and fails specifically to admit, deny, explain, or fairly meet the substance of any of the allegations set forth in the compliance specification and notice of hearing as required by

² In the underlying case, the judge ordered the Respondent to reimburse the pension fund for contributions the Respondent did not make on behalf of the discriminatees. Under the terms of the collective-bargaining agreement, the Respondent must also pay to the pension fund a 10-percent penalty for failure to remit timely contributions to the fund. In this Decision and Order, the term "'Respondent'" includes George M. Clancy Carting Co., Inc., and its alter ego, Moving, Inc.

³ There is nothing in the record explaining these claims.

Section 102.56(b) of the Board's Rules and Regulations. The General Counsel's motion also alleges that the Respondent is attempting to contest its liability as determined by the Board's Order and enforced by the court.

On January 10, 1991, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) Contents of the answer to specification.---The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.---. . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

As noted in the General Counsel's Motion for Summary Judgment, the Respondent's answer fails to admit, deny, explain or meet the substance of any of the allegations set forth in the compliance specification, as required

under Section 102.56(b). Specifically, the answer fails to set forth in detail Respondent's position as to the applicable premises for computing backpay and pension contributions and fails to furnish appropriate supporting figures, although such matters are within the knowledge of the Respondent. The effect of such failure to plead specifically and in detail to the allegations in the compliance specification, under Section 102.56(c) of the Board's Rules and Regulations, is that such allegations shall be deemed to be admitted to be true, and may be so found without the taking of evidence. Honeycomb Plastics Corp., 296 NLRB No. 17 (Aug. 17, 1989); Challenge-Cook Bros. of Ohio, 295 NLRB No. 50 (June 15, 1989).

The General Counsel further notes that the Respondent's answer fails to raise any issue with respect to the specification that would warrant a hearing. In this regard, the Respondent failed in the underlying unfair labor practice proceeding to raise any basis upon which to conclude that the Respondent's bargaining obligations did not continue past the expiration of the collective-bargaining agreement. Achilles Construction Co., 290 NLRB 240 (1988). See also NLRB v. Katz, 369 U.S. 736 (1962). In addition, the Respondent's claim in its answer that it was not required to contribute to the pension fund is an attempt to relitigate in a compliance proceeding matters which have been determined by the Board in a prior unfair labor practice case. Ford Bros., 284 NLRB 211, 213 (1987).

Accordingly, we conclude that the backpay amounts owing the discriminatees and the amounts due as payments to the pension fund are as stated in paragraphs 9 and 15 of the compliance specification, respectively, and we shall grant the General Counsel's Motion for Summary Judgment and issue the following order.

ORDER

The National Labor Relations Board orders that the Respondent, George M. Clancy Carting Co., Inc., and its alter ego, Moving, Inc. its officers, agents, successors, and assigns, shall pay the amounts set forth adjacent to the discriminatees' names in paragraphs 9 and 15 of the compliance specification, in the case of the discriminatees named in paragraph 15 as contributions on their behalf to the pension fund, and in the case of those named in paragraph 9 as backpay owed them, plus interest computed in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987), and accrued to the date of payment of their backpay, less all tax withholdings as required by Federal, state, and municipal laws.

Dated, Washington, D.C. June 10, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD